



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 28 2018

REPLY TO THE ATTENTION OF:

**VIA E-MAIL**

**RETURN RECEIPT REQUESTED**

Mack McGuffey  
600 Peachtree Street NE, Suite 5200  
Atlanta, Georgia 30308  
Email: [mack.mcguffey@troutmansanders.com](mailto:mack.mcguffey@troutmansanders.com)

Dear Mr. McGuffey:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves BFI Waste Systems of North America – Arbor Hills, docket no. CAA-05-2018-0029. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

9/28/2018.

Pursuant to paragraph 37 of the CAFO, BFI Waste Systems of North America must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Andre Daugavietis, Associate Regional Counsel, 312 886-6663.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Frank", is written over a horizontal line.

Nathan Frank, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Andre Daugavietis/C-14J  
Scott Miller, [millers@michigan.gov](mailto:millers@michigan.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CAA-05-2018-0029  
)  
BFI Waste Systems of North America, LLC) Proceeding to Assess a Civil Penalty  
Northville, Michigan ) Under Section 113(d) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )  
\_\_\_\_\_)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is BFI Waste Systems of North America, LLC (BFI), a Delaware limited liability company that, until February 2, 2017, owned and operated the gas collection and control system at Arbor Hills Landfill, located in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Under Section 111 of the CAA, EPA promulgated the New Source Performance Standards for Municipal Solid Waste (MSW) Landfills (Landfills NSPS) at 40 C.F.R. §§ 60.750 through 60.759 and the NSPS General Provisions at 40 C.F.R. §§ 60.1 to 60.19.

10. The owner or operator of an MSW landfill with a design capacity over 2.5 million megagrams and 2.5 million cubic meters must calculate a nonmethane organic compound (NMOC) emission rate. If the NMOC emission rate is greater than 50 megagrams per year, the landfill is required to install, operate, and monitor a gas collection and control system (GCCS) in accordance with the NSPS for MSW Landfills requirements.

11. The NSPS for MSW Landfills, at 40 C.F.R. § 60.759(b)(1)-(2) requires that the landfill gas extraction components are constructed of material of suitable dimensions to withstand planned overburden or traffic, and requires collection devices to be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air.

12. The NSPS for MSW Landfills, at 40 C.F.R. § 60.759(b)(1) requires that the GCCS extend as necessary to comply with gas migration standards in 40 C.F.R. §

60.752(b)(2)(ii)(A)(4), which require active collection systems be designed to minimize offsite migration of subsurface gas.

13. The NSPS for MSW Landfills, at 40 C.F.R. § 60.755(a)(3)&(5), requires that exceedances of the GCCS wellhead monitoring parameters (temperature, oxygen/nitrogen, and pressure) are corrected within 15 calendar days, the GCCS is expanded within 120 days, or an alternative compliance timeline (ACT) request is submitted.

14. The NSPS for MSW Landfills, at 40 C.F.R. § 60.752(b)(2)(ii)(A)(3), requires that the GCCS collect landfill gas at a “sufficient extraction rate,” defined at 40 C.F.R. § 60.751 to mean “a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration.”

15. The NSPS General Provisions, at 40 C.F.R. § 60.11(d), requires that at all times, including periods of startup, shutdown, and malfunction, the air pollution control equipment is operated in a manner consistent with good air pollution control practice for minimizing emissions.

16. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for MSW Landfills (Landfills NESHAP) at 40 C.F.R. §§ 63.1930 through 63.1990 and the NESHAP General Provisions at 40 C.F.R. §§ 63.1 through 63.16.

17. The NESHAP for MSW Landfills, at 40 C.F.R. § 63.1955, requires the owner or operator of an MSW landfill to comply with the requirements of the Landfills NSPS.

18. The NESHAP General Provisions, at 40 C.F.R. § 63.6(e)(1)(i), requires that at all times, including periods of startup, shutdown, and malfunction, the air pollution control

equipment and monitoring equipment is operated in a manner consistent with safety and good air pollution control practices for minimizing emissions.

19. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA an operating permit program meeting the requirements of Title V.

20. In accordance with Section 502(b) of the CAA, U.S.C. § 7661a(b), EPA promulgated regulations implementing Title V of the CAA. *See* Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

21. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provided that after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V operating permit.

22. EPA gave interim approval of the Michigan Title V permit program on January 10, 1997. *See* 62 Fed. Reg. 1387 (effective on February 10, 1997). EPA granted source category interim approval of Michigan's Title V program on June 18, 1997. *See* 62 Fed. Reg. 34010 (effective on July 19, 1997). EPA fully approved the Michigan Title V program on December 4, 2001. *See* Fed. Reg. 62949 (effective on November 30, 2001).

23. The Michigan regulations governing the Title V permit program, also known as the Renewable Operating Permit (ROP) Program, are codified at R 336.1210 – R 336.1219.

24. The Michigan Department of Environmental Quality (MDEQ) issued a ROP (MI-ROP-N2688-2011) to Veolia-Arbor Hills Landfill, now Advanced Disposal-Arbor Hills Landfill, on January 24, 2011 (the ROP).

25. The ROP required BFI to comply with the Landfills NSPS at 40 C.F.R. Part 60, Subpart WWW, and the Landfills NESHAP at 40 C.F.R. Part 63, Subpart AAAA, until BFI transferred ownership of the GCCS to Advanced Disposal.

26. EPA may assess a civil penalty of up to: (1) \$37,500 per day of violations with a maximum of \$295,000 for violations that occurred between January 13, 2009 and December 6, 2013; (2) \$37,500 per day of violation with a maximum of \$320,000 for violations that occurred after December 6, 2013 and before November 2, 2015; and (3) \$46,192 per day of violation with a maximum of \$362,141 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

27. EPA may assess a penalty greater than \$369,532 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

28. EPA and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$369,532 is appropriate for an administrative penalty action.

29. Section 113(d)(1) limits EPA's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where EPA and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

30. EPA and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

### Factual Allegations and Alleged Violations

31. BFI formerly owned and operated the GCCS at the Arbor Hills Landfill (the Landfill) located at 10690 West Six Mile Road, Northville, Michigan.

32. BFI retained ownership of the GCCS at the Landfill in a Purchase Agreement dated March 8, 2000 and operated the GCCS, including over 300 gas collection wells, two enclosed flares, and one utility flare. Subsequently, as of February 2, 2017, BFI transferred ownership and control of the GCCS to Advanced Disposal, and as a result is no longer an owner or operator of the affected facility.

33. On September 29, 2016, EPA issued three Findings of Violation (FOVs) to BFI, Advanced Disposal, and Arbor Hills Energy. The FOV issued to BFI alleged that it violated the Landfill NSPS, the Landfills NESHAP, the NSPS General Provisions, the NESHAP General Provisions, and the ROP.

34. On November 14, 2016, representatives of Advanced Disposal, BFI, Arbor Hills Energy, and EPA discussed the September 29, 2016 FOVs. The parties have also had subsequent discussions and communications regarding this matter.

35. The violations EPA alleges are:

a. Failure to install an active collection system that could withstand overburden, address water in the Landfill, and prevent gas into the air as required at 40 C.F.R. § 60.759(b)(1)-(2), 40 C.F.R. § 63.1955, and its ROP.

b. Failure to address off-site landfill gas migration and extend the active collection system of the Landfill to comply with gas migration standards as required at 40 C.F.R. § 60.759(b)(1), 40 C.F.R. § 63.1955, and its ROP.

- c. Failure to submit timely ACT requests as required at 40 C.F.R. § 60.755(a)(3)&(5), 40 C.F.R. § 63.1955, and its ROP.
- d. Failure to perform a timely performance test for two enclosed flares as required by the Landfill ROP.
- e. Failure to operate the flares during turbine outages and maintain good air pollution control practices as required in 40 C.F.R. § 60.11(d) and 40 C.F.R. § 63.6(e)(1)(i).
- f. Failure to collect gas at a sufficient extraction rate as required in 40 C.F.R. § 60.752(b)(2)(ii)(A)(3), 40 C.F.R. § 63.1955, and its ROP.

**Civil Penalty**

36. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the Clean Air Act Stationary Source penalty policy, the facts of this case, and Respondent's cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$406,000.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$406,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045

Field Tag 4200 of the Fedwire message should read: "D68010727  
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.



38. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Andre Daugavietis (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

### **General Provisions**

42. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and mack.mcguffey@troutman.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

43. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

44. Other than the violations referenced in paragraph 43, the CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

45. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraphs 43 and 44, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

46. Respondent certifies that it is no longer an owner or operator of the Landfill, and therefore it is not subject to the Landfills NSPS, Landfills NESHAP, the NSPS and NESHAP General Provisions, and ROP applicable to the Landfill.

47. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

48. The terms of this CAFO bind Respondent, its successors and assigns.

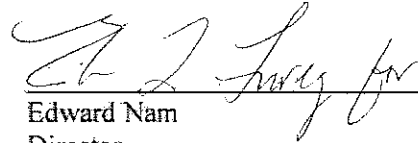
49. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

50. Each party agrees to bear its own costs and attorney’s fees in this action.

51. This CAFO constitutes the entire agreement between the parties and may only be amended or modified by written agreement executed by all parties.

**United States Environmental Protection Agency, Complainant**

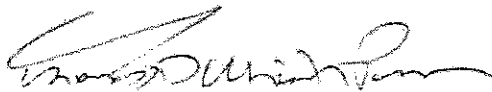
9/27/18  
Date

  
\_\_\_\_\_  
Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

BFI Waste Systems of North America, LLC, Respondent

9/26/18

Date



Thomas Ulreich-Power

Vice President

BFI Waste Systems of North America, LLC.

**Consent Agreement and Final Order**

**In the Matter of: BFI Waste Systems of North America, LLC**

**Docket No. CAA-05-2018-0029**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

9/28/18

Ann L. Coyle

Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order

In the matter of: BFI Waste Systems of North America – Arbor Hills Landfill

Docket Number: CAA-05-2018-0029

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2018-0029, which was filed on 9/28/2018, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Respondent:

Mack McGuffey  
600 Peachtree Street NE, Suite 5200  
Atlanta, Georgia 30308  
[mack.mcguffey@troutmansanders.com](mailto:mack.mcguffey@troutmansanders.com)

Copy by E-mail to  
Attorney for Complainant:

Andre Daugavietis  
[daugavietis.andre@epa.gov](mailto:daugavietis.andre@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: September 28, 2018

  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

N/A